

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL THOMAS HURTH,)	1:05-CV-0597 OWW JMD HC
Petitioner,)	ORDER SCHEDULING EVIDENTIARY
v.)	HEARING
MICHAEL KNOWLES,)	ORDER DIRECTING CLERK OF COURT
Respondent.)	TO CHANGE NAME OF RESPONDENT

Petitioner is a state prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition on May 3, 2005. Petitioner argues, among other things, that his rights were violated when the jury improperly considered definitions of voluntary and involuntary manslaughter that were retrieved from an outside source rather than those contained in the jury instructions. Petitioner argues that he is entitled to an evidentiary hearing on the issue as he has established a prima facie case of juror misconduct.

A. Juror Misconduct

Petitioner bases his claim on juror interviews that were conducted by a private investigative service following his trial. (See Exhibits in Support of Petition.) Petitioner presented his claim and his request for an evidentiary hearing, along with the transcripts of the juror interviews, to the Fresno

1 County Superior Court in a petition for writ of habeas corpus. (Lodged Docs., Vol. 1, Ex. 7.) The
2 court denied the claim finding that none of the jurors could identify the source of the definitions in
3 question, that no juror saw a dictionary being used, and that one juror stated that clarification of the
4 definitions was taken from the court's instructions. (Lodged Docs., Vol. 1, Ex. 8 at 10.) Petitioner
5 presented the same claim to the California Court of Appeal, which also denied it finding that, for the
6 most part, juror misconduct had not been shown and that, to the extent extraneous materials were
7 introduced, they were not likely to have influenced any juror. (Lodged Docs., Vol. 1, Ex. 9; Ex. 10
8 at 1.) The California Supreme Court subsequently rejected the same claim without comment.
9 (Lodged Docs., Vol. 1, Exs. 11-12.) None of the state courts granted Petitioner an evidentiary
10 hearing.

11 _____ "The standard governing [requests for an evidentiary hearing] establishes a reasonably low
12 threshold for habeas petitioners to meet. A habeas petitioner is entitled to an evidentiary hearing if:
13 (1) the allegations in his petition would, if proved, entitle him to relief; and (2) the state court trier of
14 fact has not, after a full and fair hearing, reliably found the relevant facts. . . . In these circumstances,
15 a petition may be dismissed without a hearing only when it consists solely of conclusory, unsworn
16 statements unsupported by any proof or offer thereof." Phillips v. Woodford, 267 F.3d 966, 973 (9th
17 Cir. 2001); see also Earp v. Ornoski, 431 F.3d 1158, 1167 (9th Cir. 2005) ("[W]here the petitioner
18 establishes a colorable claim for relief and has never been afforded a state or federal hearing on this
19 claim, we must remand to the district court for an evidentiary hearing."); Hendricks v. Vasquez, 974
20 F.2d 1099, 1103 (9th Cir. 1992) (stating that a hearing is not required if the state court reliably found
21 the relevant facts or there are no disputed facts and the claim presents a purely legal question).

22 . "Juror misconduct occurs when a juror introduces into the jury's deliberations a matter which
23 was not in evidence or in the instructions. No bright line test exists to assist courts in determining
24 whether a petitioner has suffered prejudice from juror misconduct. We therefore place great weight
25 on the nature of the extraneous information that has been introduced into deliberations. Furthermore,
26 we cannot grant habeas relief on a juror misconduct claim unless we are convinced that the alleged
27 error had a substantial and injurious effect on the verdict." Parkinson v. Cambra, 105 Fed.Appx.
28

1 185, 187 (9th Cir. 2004) (citations and quotation marks omitted). When determining whether an
2 error had such an effect, a court considers “(1) whether the extrinsic material was actually received,
3 and if so, how; (2) the length of time it was available to the jury; (3) the extent to which the jury
4 discussed and considered it; (4) whether the extrinsic material was introduced before a verdict was
5 reached, and if so, at what point in the deliberations it was introduced; and (5) any other matters
6 which may bear on the issue of ... whether the introduction of extrinsic material [substantially and
7 injuriously] affected the verdict.” Mancuso v. Olivarez, 292 F.3d 939, 951-52 (9th Cir. 2002).

8 _____ Petitioner’s claim of misconduct is based on the following statements of Jurors White and
9 Benzler:

10 Q: I know that you stated to Mr. Carlson before that somebody brought in some form
11 of definition if you will.

12 [Juror White]: Yes.

13 Q: In what way...please describe that for me.

14
15 A: Uh, I think...I don’t know whether it was a dictionary or just written out on a piece
16 of paper....I really don’t remember very well. I only remembered it after thinking
17 about it after he had brought it up and um, but yes, I remember that somebody had
18 brought it in...maybe even two people. Um, and they just...I guess they just read it off
19 the paper. That’s the best I can remember.

20 Q: Do you remember which juror brought that document in?

21 A: I don’t remember who it was. I know it was...I think it was one of the girls that sat
22 across from me when we were in the deliberation room, but I don’t remember who it
23 was. I don’t remember if Del brought one in too. I don’t remember.

24 Q: And it was just outlining or defining the differences between voluntary and
25 involuntary manslaughter?

26 A: I do believe that that’s the word they were looking up.

27 Q: And do you remember anybody stating where they had received that definition
28 from or retrieved that definition from?

A: I don’t remember.

1 Q: O.K. You don't remember if it was the dictionary or was it a copied page out of a
2 dictionary?

3 A: I don't know.

4 Q: That's alright.

5 A: It didn't really mean much to me so I guess I didn't pay much attention to it.
6

7 ...

8 Q: And as well, you recall somebody did bring in some form of definition if you will.
9

10 A: Yes.

11 Q: Of the differences in voluntary and involuntary manslaughter?
12

13 A: I believe that those were the words because that [is] the only thing I can
14 remember.

15 Q: So did everybody look at those definitions? Did it go around the table or
16 something?

17 A: I think it was just read off.

18 Q: Do you remember who read it off?

19 A: I think it was Del that read it.
20

21 Q: What made you believe that it was a definition that was retrieved by somebody
22 personally?

23 A: Well, after thinking about it I did remember that they had sent a request to the
24 judge to get more information and that was his...one of his responses, to look it up
ourselves.

25 Q: You are saying the judge actually told you to use a dictionary and look it up?
26

27 A: Just to look it up ourselves.
28

1 . . .

2 Q: O.K. And based on that definition that was obtained outside by a juror, was that
3 definition relied on?

4 A: I don't know if it was relied on or supported what we had said[.]

5
6 Q: But it was used?

7 A: It was used.

8
9 Q: And it was taken as gospel, if you will, as it being what the true definitions were?

10 A: Well, yeah, because they didn't believe me and whoever else understood the
11 meaning of it and so I would say yes, they did rely on that.

12 . . .

13 Q: They were actually looking at, from what you are stating, is the difference between
14 voluntary and involuntary?

15 A: Yes

16 Q: And so both of those definitions were read off by you believe Del, who was the jury
17 foreman?

18 A: Yes.

19
20 Q: And those definitions to your knowledge were not provided by the judge, because the
21 judge said look it up on your own?

22 A: Yes.

23 (Exhibits in Support of Petition, Interview of White at 8-9, 16-19.)

24 Q: Let me ask you this, concerning that issue it is my understanding that there was
25 some question with regards to the definition between voluntary and involuntary
26 manslaughter, is that correct?

27 [Juror Benzler]: Huh-huh, right.

28 Q: And that your jury foreman requested a clearer definition if you will, from Judge

1 Sarkisian, is that a correct statement?

2 A: Huh-huh, yes.

3
4 Q: Was that adequately defined for you?

5 A: No.

6
7 Q: There was still some confusion?

8 A: Yes.

9
10 Q: Did anybody attempt to on their own, look up the definition of what the definition
between voluntary and involuntary manslaughter were?

11 A: Um, I believe so. Um, let's see...I don't know how to word this. I know...I can't
12 remember the exact words that we were trying to pick out that needed the
clarification, but I believe people did on their own try to look up because the next day
13 it seemed like uh, there were something said to the effect that well, this means da-da-
da. And so we kind of had to uh...if the judge...let's put it this way. For me and I'm
14 sure for others, if the judge would have answered that question directly, nobody
would have had to uh, you know, go on their [own] to look it up.

15
16 Q: Did anybody bring a dictionary into the jury room?

17 A: I don't remember seeing a dictionary in there.

18
19 ...

20 Q: Do you remember anybody reading a definition off of a piece of paper that wasn't
21 provided by the court?

22 A: I can't recall that either.

23 Q: Do you remember anybody stating that they looked it up on the internet or asked a
24 friend or used some form of reference material as to any of the definitions regarding
the law?

25
26 A: No, I don't remember that either.

27
28 ...

1 Q: But you have no idea if someone may have researched this information somewhere
2 between the time you left for the evening and returned the following day?

3 A: Well, I'm sure they would have had to.

4 Q: It appears to you that someone had to have researched that because suddenly the
5 next day they had more information about this question that you had submitted to the
6 judge?

7 A: Correct.

8 Q: So somebody within that jury panel did some type of research somehow and came
9 back with their, I guess I would say definition of the questions that you had?

10 A: Correct.

11 Q: And so they disregarded whatever instructions the judge had gave because you felt
12 they were not clear, or I guess the jurors felt they were not clear?

13 A: Well, yeah.

14 Q: I'm just trying to make it clear[.]

15 A: Yeah.

16 Q: So basically your decision is based on something that somebody within the jury
17 panel learned outside of the court process, outside the instructions being monitored by
18 the judge that was hearing the case?

19 A: Yeah, for that one particular thing.

20 ...

21 Q: Any other jurors state that they went home and looked something up?

22 A: I don't recall that.

23 Q: You also made mention that Dale Abercrombie, the jury foreman, had read a
24 definition to the jury?

25 A: Huh-huh.

1 Q: Where did he obtain that definition?

2 A: I don't know.

3
4 Q: Is that something that was provided by the judge?

5 A: I don't think so because what I recall, whatever the judge wrote back was
6 absolutely no help.

7 ...

8
9 Q: You had made a comment about everybody had left and came back and had some
10 kind of opinion.

11 A: No, no, I didn't say that.

12 Q: That's what I'm trying to figure out.

13 A: That wasn't it. What we were trying to get was the definition of the law, you
14 know. How it was written it was not clear and we thought that would be a question
15 that the judge could answer. It was a very simple question to me. Just define this so
16 we can go and deliberate. He didn't do that. So, it kind of left us in the dark, you
17 know, those that were trying to do the best we could with the evidence we had and so
18 you know, whatever, in our discussions the next day...now, I looked up the one word
19 and didn't say anything, but the next day other people had and didn't state where they
20 got it but seemed to have a better knowledge of what we were looking at.

21 Q: And that's the questions I was going to ask. Did you have the impression that the
22 other people suddenly the next day had a better knowledge of what it was that you had
23 been trying to discover the day before?

24 A: Right.

25 Q: So it just appeared that some other people had also done some type of research?

26 A: Huh-huh, yeah, exactly.

27 (Exhibits in Support of Petition, Interview of Benzler at 7-8, 13-14, 17-19.)

28 The statements of Jurors White and Benzler raise a colorable claim of prejudicial jury
misconduct, as both stated that, despite the fact the trial court failed to adequately define voluntary

1 and involuntary manslaughter, definitions for the terms were obtained, read off to the entire jury, and
 2 accepted as accurate. See Marino v. Vasquez, 812 F.2d 499, 505-06 (9th Cir. 1987) (finding that
 3 consulting a dictionary definition for the meaning of “malice” constituted improper consideration of
 4 extrinsic information); U.S. v. Morales, 108 F.3d 1213, 1222 (10th Cir. 1997) (finding that jury
 5 engaged in misconduct by researching definition of “distribution”). While it is not entirely clear that
 6 the definitions were specifically obtained from a dictionary, the statements of White and Benzler
 7 make clear that they were not obtained from the judge or the jury instructions. Further, absent an
 8 evidentiary hearing, the state courts were not in a position to make a credibility determination
 9 regarding the conflict between the statements of White and Benzler and the statements of Jurors
 10 Herzog and De La Cruz who stated that no outside definitions were used and that the jury clarified
 11 the issues using their own notes and the jury instructions. (See Exhibits in Support of Petition,
 12 Interview of Herzog at 9:16-10:8; Interview of De La Cruz at 7:18-8:14.) The state courts were also
 13 not in a position to determine whether Petitioner suffered prejudice due to misconduct, as the source
 14 and substance of the definitions were unknown and it was unclear to what extent the jury used the
 15 definitions during deliberations. See Mayhue v. St. Francis Hosp. of Wichita, Inc., 969 F.2d 919,
 16 924 (10th Cir. 1992) (stating that factors relevant in determining prejudice caused by a jury’s
 17 unauthorized consultation of a dictionary include the importance of the word to the resolution of the
 18 case, the extent to which the definition differs from the jury instructions, and the extent to which the
 19 jury discussed and emphasized the definition).

20 Accordingly, this Court will conduct an evidentiary hearing on the issue of the jury’s
 21 consideration of extraneous definitions of voluntary and involuntary manslaughter. Rule 8(a) of the
 22 Rules Governing Section 2254 Cases; Townsend v. Sain, 372 U.S. 293, 313, 318 (1963).

23 B. Proper Respondent

24
 25 Petitioner states that he is currently incarcerated at Mule Creek State Prison. (Petition at 1.)
 26 Respondent states that the warden of that institution is Rosanne Campbell. (Answer at 1 n.1.)
 27 Pursuant to Rule 25 of the Federal Rules of Civil Procedure, the Clerk will be directed to substitute
 28 Rosanne Campbell as Respondent in this matter.

1 For the foregoing reasons, the Court HEREBY ORDERS that:

2 1) an evidentiary hearing is ORDERED set for **April 28, 2009, at 8:45 a.m., before the**
3 **undersigned;** and

4 2) The Clerk of Court is DIRECTED to substitute Rosanne Campbell as Respondent in this
5 matter.
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8 IT IS SO ORDERED.

9 **Dated: July 14, 2008**

/s/ John M. Dixon
10 UNITED STATES MAGISTRATE JUDGE
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